

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re: )  
JOSEPH MARTIN THOMAS, ) Bankruptcy No. 20-10334-TPA  
Debtor. ) Chapter 11  
JOSEPH MARTIN THOMAS )  
Movant, ) Docket No.  
vs. ) Related to Docket No. 417  
PNC BANK, NATIONAL )  
ASSOCIATION; TAX COLLECTOR, )  
CITY OF ERIE; ERIE COUNTY TAX )  
CLAIM BUREAU; UNITED STATES )  
OF AMERICA, INTERNAL REVENUE )  
SERVICE; COMMONWEALTH OF )  
PENNSYLVANIA, DEPT. OF )  
REVENUE; and DALE E. PEHRSSON )  
AND ROBERT S. PEHRSSON, )  
Respondents. )

**RESPONSE BY THE COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA  
DEPARTMENT OF REVENUE TO THE MOTION FOR  
SALE OF REAL AND PERSONAL PROPERTY FREE AND DIVESTED OF LIENS**

AND NOW, comes the Commonwealth of Pennsylvania, Office of Attorney General, by its undersigned counsel, on behalf of the Pennsylvania Department of Revenue, and makes the following statement in support of its *Response to the Motion for Sale of Real and Personal Property Free and Divested of Liens*.

1. The Pennsylvania Department of Revenue (hereinafter Revenue) is a party in interest, having asserted a claim for pre-petition taxes.
2. The Debtor's *Motion for Sale of Real and Personal Property Free and Divested of Liens* and accompanying proposed Order propose to exempt the sale of real property from all realty transfer taxes pursuant to 11 U.S.C. § 1146(a).
3. Under Pennsylvania's Tax Reform Code of 1971 [72 PA. STAT. §§ 7101 et seq.], a "person" who "makes, executes, delivers, accepts or presents" a "document"

“for recording” must ordinarily pay a state realty transfer tax. 72 PA. STAT. § 8102-C.

4. Pursuant to § 1146(a), “the issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 or 1191 of this title, may not be taxed under any law imposing a stamp tax or similar tax.” (emphasis added).
5. In *Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 52-53 (2008), the Supreme Court held that “[§] 1146(a) affords a stamp-tax exemption only to transfers made pursuant to a Chapter 11 plan that has been confirmed.<sup>1</sup>” (emphasis added). The Supreme Court explained that § 1146(a)’s exemption from state taxation should be narrowly construed, and that any ambiguities in the statutory language should be “resolved in [the state’s] favor.” *Piccadilly Cafeterias, Inc.*, 554 U.S. at 41, 50.
6. The holding in *Piccadilly Cafeterias, Inc.*, precludes the application of § 1146(a) to transfers of assets occurring before the confirmation of a Chapter 11 plan. *Id.* at 53.
7. Revenue has no objection to the sale itself; however, the sale is subject to state realty transfer tax pursuant to 72 PA. STAT. § 8102-C. The Pennsylvania transfer tax cannot be exempted under § 1146(a) because the Debtor’s plan has not yet been confirmed.
8. This Response is filed under an abundance of caution: a Chapter 11 Plan Confirmation hearing is currently scheduled for the same date as the hearing on the present Sale Motion – June 3, 2021 – at 10:30 a.m. In the event the Amended Chapter 11 Plan dated April 1, 2021 (Doc. 348) is confirmed prior to the sale hearing, this Response will be rendered moot.

**WHEREFORE**, the Commonwealth of Pennsylvania, Department of Revenue, respectfully requests that the language exempting the sale from transfer tax pursuant to 11 U.S.C. § 1146(a) be stricken from the Sale Order.

Respectfully submitted,

JOSH SHAPIRO  
ATTORNEY GENERAL

Date: May 24, 2021

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